LIBRARY
SUPREME COURT, U.S.

No. 539

Office-Supreme Court, U.S.
FILED
SEP 9 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

SOCIETE INTERNATIONALE, etc., *Petitioner*

v.

WALLY KELBERINE and LENKA BERLIN, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOHN J. WILSON
FRANK H. STRICKLER
815-15th Street, N. W.
Washington, D. C. 20005
Attorneys for Petitioner
Societe Internationale, etc.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
Opinion Below	2
Jurisdiction	2
Question Presented	2
Constitutional Provision and Statutes Involved	3
Statement of the Case	3
Reasons for Granting the Writ	8
A. Introductory	8
B. The Court of Appeals Ignored Uniform Law in Holding That Interhandel Was Subject to the Jurisdiction of the District Court	9
C. The Court of Appeals Departed from Universally Accepted Principles In Making a Lawyer an Agent for Service of Original Process Upon His Nonresident Client	13
D. The Decision Below Denies Interhandel Due Process of Law	16
Conclusion	18
Appendix A	1a
Appendix B	11a

TABLE OF CASES

Chicago v. Atchison, 357 U.S. 77, 2 L. Ed. 2d 1174 (1958)	18
Church v. Church, 50 App. D.C. 239, 270 F. 361 (1921)	13
Collins v. New York Central System, 117 U.S. App. D.C. 182, 327 F. 2d 880 (1963)	12
Eastman Kodak Co. v. Southern Photo Materials Co., 273 U.S. 359, 71 L. Ed. 684 (1927)	11
Fandel v. Arabian American Oil Company, 120 U.S. App. D.C. 193, 345 F. 2d 87 (1965)	12

Page

Fehlhaber Pile Co. v. Tennessee Valley Authority, 81 U.S. App. D.C. 124, 155 F. 2d 864 (1946) 13

Graham v. Brotherhood of Firemen, 338 U.S. 232, 236, 94 L. Ed. 24 (1949) 8

Hale v. Wharton, C.C. 1896, 73 F. 739 13

International Shoe Co. v. Washington, 326 U.S. 310, 90 L. Ed. 95 (1945) 16, 17

Kenny Construction Co. v. Allen, 101 U.S. App. D.C. 334, 248 F. 2d 656 (1957) 14

Layne v. Tribune Co., 63 App. D.C. 213, 71 F. 2d 223, cert. den. 293 U.S. 572 (1934) 12

Local No. 8-6 v. Missouri, 361 U.S. 363, 4 L. Ed. 2d 373 (1960) 18

Marlowe v. Baird, 301 F. 2d 169 (6th Cir. 1962) 13

Mueller Brass Co. v. Alexander Milburn Co., 80 U.S. App. D.C. 274, 152 F. 2d 142 (1945) 12

Neely v. Philadelphia Inquirer Co., 61 App. D.C. 334, 62 F. 2d 873 (1932) 12

Page Co. v. MacDonald, 261 U.S. 446, 67 L. Ed. 737 (1922) 13

People's Tobacco Co. v. American Tobacco Co., 246 U.S. 79, 62 L. Ed. 587 (1918) 11, 12

Public Service Commission v. Brashear Freight Lines, 306 U.S. 204, 83 L. Ed. 608 (1938) 18

Schwarz v. Thomas, 95 U.S. App. D.C. 365, 222 F. 2d 305 (1955) 13

Shapiro v. Glass, 348 F. 2d 460 (2d Cir. 1965) 13

Societe Internationale v. Rogers, 357 U.S. 197, 2 L. Ed. 2d 1255 ..... 1, 10, 18

Stewart v. Ramsay, 242 U.S. 128, 61 L. Ed. 192 (1916) 13

Traher v. DeHavilland Aircraft of Canada, Ltd., 111 U.S. App. D.C. 33, 294 F. 2d 229 (1961) cert. den. 368 U.S. 387 (1962) 12

United States v. Scophony Corp., 333 U.S. 795, 92 L. Ed. 1091 (1948) 11, 12

Walker v. Calada Materials Co., 309 F. 2d 74 (10th Cir. 1962) 13

WICA v. WWSW, 89 U.S. App. D.C. 308, 191 F. 2d 502 (1951) 15, 16

Page

CONSTITUTIONAL PROVISION AND STATUTES

Constitution of the United States, 5th Amendment 16

D. C. Code (1961 Ed.):
Section 11-306 13
Section 13-103 13
Section 29-933(b) 7

D. C. Code (1961 Ed., Supp. V):
Section 11-521(a) 9, 13
Section 11-521(b) 9, 13
Section 29-933(i)(c) 6, 7

Judicial Code, Section 266 18

United States Code:
15 U.S.C. 22, Clayton Act 11
28 U.S.C. 1254(1) 2, 18
28 U.S.C. 1292(b) 18
50 U.S.C. App., Sections, 1, *et seq.*, Trading with the Enemy Act 3, 9, 10, 18

TREATISE

Stern & Grossman—Supreme Court Practice (2d Ed.) 18

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No.

SOCIETE INTERNATIONALE, etc.,[1] *Petitioner*

v.

WALLY KELBERINE and LENKA BERLIN, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner, a Swiss holding corporation having its sole place of business in Basel, Switzerland,[2] prays that a writ of certiorari issue to review Section II of the Opinion of the United States Court of Appeals for the District of Columbia, rendered in the above entitled case on April 7, 1966.

---

[1] Petitioner is also known as Interhandel, and may be so referred to herein from time to time.

[2] This is the same corporation which was petitioner in *Societe Internationale* v. *Rogers*, 357 U.S. 197, 2 L.Ed. 2d 1255 (1958).

OPINION BELOW

The opinion of the Court of Appeals is reported at U.S. App. D.C. , F. 2d , and appears in Appendix A to this brief. Petitions for rehearing by the deciding panel or rehearing *en banc* were denied on June 16, 1966.

JURISDICTION

The judgment of the Court of Appeals was entered on April 7, 1966 (R. 213), affirming the order of dismissal of the district court. A petition for rehearing by the deciding panel or rehearing *en banc,* in respect of Section II of the lower court's opinion, was filed by this Petitioner on April 22, 1966 and denied by the Court of Appeals on June 16, 1966.[3] A petition for rehearing by the deciding panel was filed by the Respondents on April 21, 1966 and unanimously denied on June 16, 1966. (R. 233).

The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1254(1).

QUESTION PRESENTED

Whether the Court of Appeals acted erroneously, violating procedural due process and departing from accepted and usual course of judicial proceedings, when it approved, in the instant action, *in personam*

---

[3] Societe Internationale's petition for rehearing by the deciding panel was denied by a vote of two to one (Senior Circuit Judge Wilbur K. Miller voting for a rehearing) (R. 231); and petition for rehearing *en banc* was denied by the following order (R. 232):

> "On consideration of the petition of appellee, Societe Internationale, etc., for rehearing *en banc,* and the responsive pleadings filed thereto, and there not being a majority of the circuit judges of this circuit in favor of a rehearing of the above-entitled case by the court *en banc,* the petition for rehearing *en banc* is hereby denied."

jurisdiction over a nonresident, foreign corporation solely on the basis of summons being served upon a Washington, D. C., practicing lawyer who, in that capacity only and not as a resident agent or otherwise, represented the foreign corporation in a separate and wholly independent Section 9(a) Trading with the Enemy Act suit against the Attorney General in the United States District Court for the District of Columbia, the only court where the foreign corporation could file such an action.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The pertinent portions of the Fifth Amendment to the Constitution of the United States, of the Trading with the Enemy Act and of District of Columbia Code provisions, if not quoted in the text, are set forth in Appendix B to this brief.

STATEMENT OF THE CASE

On February 16, 1942, the United States Government, pursuant to the Trading with the Enemy Act, 50 U.S.C. App. Sections 1, *et seq.*, seized Interhandel's stock in General Aniline and Film Corporation. (R. 203) In 1948, John J. Wilson, a practicing attorney in the District of Columbia, on behalf of his client, Interhandel, filed suit under Section 9(a) of the Act against the then Attorney General to recover the seized property. *Sub. nom., Societe Internationale* v. *McGrath,* Civil Action No. 4360-48, United States District Court for the District of Columbia. (R. 31, 203) Interhandel is a Swiss corporation having its sole place of business in Basel, Switzerland, and under Section 9(a) of the Act, the District of Columbia was the one and only jurisdiction open to Interhandel in which

it could litigate its claim to the property seized by the Government. (R. 33)

After filing the suit in 1948, Wilson, as attorney, prosecuted the suit until a settlement was achieved and a Stipulation of Settlement, entered into by the Attorney General and Interhandel, was filed with the District Court, dated December 20, 1963, and amended March 25, 1964 (R. 78-92). The settlement envisaged the dismissal of the pending civil action (which has been accomplished), and Section III(1)(e) of the Stipulation provided as follows (R. 80):

> "[That Interhandel would] Deliver to the Attorney General an instrument, in form satisfactory to the Attorney General evidencing that it has appointed John J. Wilson as attorney-in-fact to accept service of process on its behalf for such proceedings *between the parties to this Stipulation* [the Attorney General, the Treasurer of the United States and Interhandel] as may be necessary to the interpretation or enforcement, or both, of this Stipulation or any judgment concluding the Action between Interhandel and the Defendants, *but for no other purpose and no other extent whatsoever.*" (Emphasis supplied)

The power of attorney was delivered and it, too, was expressly delimited by the foregoing italicised phrase "but for no other purpose and no other extent whatsoever."[4] (R. 34)

In March 1965, the shares of stock were sold and, under the terms of the Stipulation of Settlement, some

---

[4] The Court of Appeals stated that it did not "rest" upon that power (App. A, p. 6a). This remark was preceded by an effort to make the language of the provision fit the facts of the case (App. A, p. 6a). This, Petitioner submits, was not even remotely justified.

One Hundred Twenty-one Million Dollars ($121,000,000) were deposited in a special account in the Treasury to be held for indemnity of the United States, and, to the extent not so consumed, ultimate distribution to Interhandel. (R. 9, 203).

On March 16, 1965, Respondents, purporting to represent a class of more than 200,000 persons, filed a complaint in the United States District Court for the District of Columbia against Petitioner and the Attorney General and the Secretary of the Treasury of the United States. The suit sought to enjoin the Attorney General and the Secretary from paying to Interhandel any part of the funds being held by the Treasury in the special account.[5] It also sought an adjudication that the Respondents as a class had a right to this fund. (R. 8-14).

Respondents based their claim to the fund on the damages they allegedly suffered as a result of the Nazi conspiracy in Europe between 1933 and 1945, alleging that a number of men and corporations in Europe acted in a gigantic conspiracy in the course of which the Respondents and members of the class they represent were killed, forced into slave labor and had their properties confiscated. They also alleged that I. G. Farbenindustrie (Farben), a corporation, was an integral part of the conspiracy; that Interhandel was

[5] Respondents' applications for injunctive relief were denied: (1) by the district court (Jones, J.) on April 9, 1965; (2) by the Court of Appeals (Fahy, Washington and McGowan, JJ.) on April 12, 1965; (3) by Chief Justice Warren on April 14, 1965; (4) by Mr. Justice Harlan (*ex parte*) on April 14, 1965; and (5) by the Court of Appeals again (Fahy, Washington and McGowan, JJ.) on May 6, 1965.

The lower court is mistaken in stating that payment of Interhandel's share has been delayed "by this law suit." (App. A, p. 2a).

created by Farben and, therefore, should be held accountable for Farben's acts to the extent of Interhandel's property within the United States. (R. 9-10).

Respondents attempted to effect service on Interhandel (1) by serving Wilson as "attorney and agent for Interhandel" (R. 31-32), and (2) by serving the Superintendent of Corporations for the District of Columbia, as "statutory agent" for Interhandel pursuant to Section 29-933(i)(c) of the District of Columbia Code (1961 Ed. Supp. V). (App. B) (R. 30). Interhandel filed motions to dismiss and/or quash both of the attempted services of process on the grounds that it was not subject to process in the District of Columbia and it had not been properly served. (R. 29-30).

The record shows that Interhandel has never transacted business in the District of Columbia; it never has had an office here; it never has been licensed or qualified to do business in the District of Columbia; and, except for the limited power of attorney granted Wilson, it never has appointed or has had an agent to accept service of process in the District of Columbia. (R. 32-33).

The record is clear that Interhandel's activities in the District of Columbia were entirely related to its participation as plaintiff in Civil Action No. 4360-48, the Trading with the Enemy Act suit. As such, Interhandel did nothing more than any other litigant. It prosecuted and ultimately settled its case. There is not one iota of evidence that Interhandel's *nexus* with the District of Columbia went beyond its activities as plaintiff in that civil action.

The district court granted the Government-defendants' motion to dismiss, quashed the service of process

on Wilson and the Superintendent of Corporations, and dismissed the complaint as to all defendants. (R. 200).

The Court of Appeals affirmed the dismissal of the complaint against the Government-defendants, holding that the action as to them was a suit against the United States which had not consented to being sued. The Court of Appeals also held that the complaint was correctly dismissed for failure to state a claim upon which relief can be granted. However, it further held in Section II of its opinion (1) that Interhandel was subject to the court's jurisdiction because its Trading with the Enemy Act suit was instituted and prosecuted in the District; and (2) that the service of process upon Interhandel's attorney was valid and effective for *in personam* jurisdiction over Interhandel.[6]

---

[6] The lower court did not pursue the service of process upon the Superintendent of Corporations under Section 29-933(i)(c) D.C. Code (1961 Ed., Supp. V) (App. B), see *infra*, p. 6. It rejected Interhandel's contention, erroneously, Petitioner submits, that the waiver provision of section 29-933(b) D.C. Code (1961 Ed.) means that carrying on litigation is not transacting business. (App. A, p. 5a) That section provides that

> "A foreign corporation shall not be required to procure a certificate of authority merely for the prosecution of litigation, the collection of debts, or the taking of security for the same, * * *"

The appeals court reasoned only negatively; it did not hold affirmatively that "carrying on litigation" amounted to "transacting business", stating (App. A, p. 5a):

> "Furthermore the liability of a foreign corporation to suit here does not depend upon its doing business here, *it depends upon its being found here.*" (Emphasis supplied)

REASONS FOR GRANTING THE WRIT

A. Introductory

This petition is directed to Section II of the Opinion of the Court of Appeals of April 7, 1966 which, without citation of authority,[7] reached the following precedent-shattering conclusions:

> 1. That a nonresident foreign corporation is subject to the *in personam* jurisdiction of the courts of the District of Columbia in any and all actions simply because, being engaged in one piece of litigation in the District of Columbia, it was "found" there.
>
> 2. That the lawyer representing such foreign corporation in one action may be served with process as its "agent" in a wholly different and independent suit.

Petitioner submits that the pronouncements made by the Court of Appeals in Section II are not only in conflict with decisions of this Court, but that they are also in conflict with its own decisions, as well as the decisions of the Federal and State courts throughout the land.

Petitioner also submits that Section II of the decision of the Court of Appeals unconstitutionally denies Petitioner due process of law under the Fifth Amendment to the Constitution of the United States.

The importance of this decision to the fair administration of justice is underscored by the fact that the

---

[7] Footnote 6 to the opinion (App. A, p. 5a) states that the "found" feature of the local statute, cited as D.C. Code Section 11-306 (1961 Ed.) (footnote 5 to opinion)) was discussed briefly by this Court in *Graham* v. *Brotherhood of Firemen*, 338 U.S. 232, 236, 94 L. Ed. 24 (1949). Petitioner submits that the *Graham* decision sheds absolutely no light upon the problem here involved.

District of Columbia is the only jurisdiction in which Interhandel could have filed suit for the return of its seized property (50 U.S.C. App. 9(a)). If the decision below is permitted to stand, then it must follow that a nonresident corporation would also be subject to the jurisdiction of the court, and its attorney subject to service of process as its agent, if it became involved in litigation before the Court of Claims, the Tax Court, the Court of Customs and Patent Appeals, or even before any of the numerous administrative agencies in the District of Columbia. Thus, the principles enunciated in Section II would apply to a corporation organized, located and doing business only in, say, Hawaii if, as the result of litigation instituted outside of the District of Columbia, such corporation petitioned this Court for a writ of certiorari.

B. The Court of Appeals Ignored Uniform Law in Holding That Interhandel Was Subject to the Jurisdiction of the District Court

The District of Columbia Code vests the United States District Court for the District of Columbia with original jurisdiction of all civil actions where either or both of the parties "are resident or found" within the District (Title 11 Section 521(a) (D.C. Code 1961 Ed. Supp. V, App. B).[8] Section 521(b) provides that an action may not be brought by original process unless the defendant is "resident or found" within the District.

Admittedly, Interhandel is not a resident of the District of Columbia. Thus, the lower court could have

[8] Prior to December 23, 1963, the substance of Section 521 was embodied in Sections 305-6 and 308.

had *in personam* jurisdiction over Interhandel only if it were "found" in the District.

The Court of Appeals held:

> "* * * We think the institution and prosecution of a civil action in the court here clearly establishes the presence of the corporation here. It voluntarily subjected itself to the jurisdiction of the court; it could not do so *in absentia*. So we think Interhandel was clearly found here." (App. A, p. 5a)

This conclusion is erroneous for a number of reasons:

1. The threshold finding that Interhandel's institution of suit here was *voluntary*, completely overlooks the fact that Interhandel had no choice or opportunity to select a forum. The United States had seized Interhandel's property and, under Section 9(a) of the Trading with the Enemy Act, this was the only jurisdiction open to Interhandel. Interhandel was compelled to sue here or forego its claim.[9] Thus, in considering the jurisdictional question, Interhandel

---

[9] The atypical character of Interhandel's status as a plaintiff was recognized by this Court in *Societe Internationale* v. *Rogers*, 357 U.S. 197, 2 L.Ed. 2d 1255 (1958):

> "* * * Certainly substantial constitutional questions are provoked by such action. Their gravity is accented in the present case where petitioner, though cast in the role of *plaintiff*, cannot be deemed to be in the customary role of a party invoking the aid of a court to vindicate rights asserted against another. Rather petitioner's position is more analogous to that of a *defendant* for it belatedly challenges the Government's action by now protesting against a seizure and seeking the recovery of assets which were summarily possessed by the Alien Property Custodian without the opportunity for protest by any party claiming that seizure was unjustified under the Trading with the Enemy Act.* * *" (p. 210 of 357 U.S.; p. 1266 of 2 L.Ed. 2d)

should be regarded as a defendant which was brought into the District of Columbia by Government action.

2. The lower court's determination as to the meaning to be attributed to "found" is in conflict with the treatment of that term by this Court. *United States* v. *Scophony Corporation,* 333 U.S. 795, 92 L. Ed. 1091 (1948).

In *Scophony,* this Court endorsed the liberalization of the term "transacts business" in Section 12 of the Clayton Act (15 U.S.C. 22) as developed in *Eastman Kodak Co.* v. *Southern Photo Materials Co.,* 273 U.S. 359, 71 L. Ed. 684 (1927), but left undisturbed the definition of "found" as created in *People's Tobacco Co.* v. *American Tobacco Co.,* 246 U.S. 79, 62 L. Ed. 587 (1918); and, moreover, recognized that the "found" test required much more "presence" than did the elements of "transacting business". This Court said at page 807 of 333 U.S.:

> "This construction [*Eastman* case] gave the words 'transacts business' a much broader meaning for establishing venue than the concept of 'carrying on business' denoted by 'found' under the pre-existing statute and decisions."

Referring back to the *People's Tobacco* case, this Court said that "found" was equated in sequence to "presence", to "doing business by its agents there", to "of a character warranting inference of subjection to the local jurisdiction" (p. 805 of 333 U.S.).

The lower court erroneously chose "found" as a term more liberal in scope for service of process upon a nonresident corporate defendant, than the term "transacting business". It is just the opposite, as recognized in *Scophony.* Thus, if the court below was unwilling to rest its decision on the term "transacting business",

even if construed in accordance with this Court's "practical, everyday business or commercial concept of doing or carrying on business 'of any substantial character'." (p. 807 of 333 U.S.), it should not have resorted to "found" as an easier test. The teaching of *Scophony*, and its discussion of earlier cases in this Court, are that while the elements of "transacting business" may be included in the term "found", the more stringent requirements of "found" are not included in the definition of "transacting business".

The definition of "found", as contained in the *People's Tobacco* case, is the one which the Court of Appeals was obliged to employ in the case at bar, but it is obvious that it is not the one that the court actually followed. The lower court may have shied away from the determination that Petitioner was "transacting business" here because of the obvious difficulty in equating the "carrying on of litigation", to the "carrying on of business". It does not result, however, that the simpler *word* "found" provided the more elastic definition. As stated above, the very opposite is true.

3. The decision is also contrary to cases in the District of Columbia.[10] For example, Senior Circuit

---

[10] The Court of Appeals' decision in the instant case, in effect, overrules *sub silentio* earlier decisions of the Court in the sense that the "doing business" test was applied to them, instead of the "found" test, which, as applied here, could have been satisfied in the following cases: *Fandel* v. *Arabian American Oil Company*, 120 U.S. App. D.C. 193, 345 F. 2d 87 (1965); *Collins* v. *New York Central System*, 117 U.S. App. D.C. 182, 327 F. 2d 880 (1963); *Traher* v. *DeHavilland Aircraft of Canada, Ltd.*, 111 U.S. App. D.C. 33, 294 F. 2d 229 (1961), *cert. den.* 368 U.S. 387 (1962); *Mueller Brass Co.* v. *Alexander Milburn Co.*, 80 U.S. App. D.C. 274, 152 F. 2d 142 (1945); *Layne* v. *Tribune Co.*, 63 App. D.C. 213, 71 F. 2d 223, *cert. den.* 293 U.S. 572 (1934); and *Neely* v. *Philadelphia Inquirer Co.*, 61 App. D.C. 334, 62 F. 2d 873 (1932).

Judge Prettyman, the author of the lower court's opinion, had, in effect, in an earlier decision, equated the terms "found" and "doing business", as applicable to corporate entities under Section 11-306 D.C. Code (1961 Ed.) (the predecessor of Section 11-521), and under Section 13-103. *Fehlhaber Pile Co.* v. *Tennessee Valley Authority,* 81 U.S. App. D.C. 124, 155 F. 2d 864 (1946).

C. The Court of Appeals Departed from Universally Accepted Principles in Making a Lawyer an Agent for Service of Original Process Upon His Nonresident Client

1. It has long been settled that a nonresident party litigant is exempt from service of process at the place of the litigation. *Stewart* v. *Ramsay,* 242 U.S. 128, 61 L. Ed. 192 (1916); *Page Co.* v. *MacDonald,* 261 U.S. 446, 67 L. Ed. 737 (1922); *Schwarz* v. *Thomas,* 95 U.S. App. D.C. 365, 222 F. 2d 305 (1955); *Church* v. *Church,* 50 App. D.C. 239, 270 F. 361 (1921); *Hale* v. *Wharton,* C.C., 1896, 73 F. 739; *Shapiro* v. *Glass,* 348 F. 2d 460 (2d Cir. 1965); *Marlowe* v. *Baird,* 301 F. 2d 169 (6th Cir. 1962); and *Walker* v. *Calada Materials Co.,* 309 F. 2d 74 (10th Cir. 1962).

Ignoring this principle is *per se* startling. *A fortiori,* service upon the party's lawyer compounds the departure.

2. The transformation of a lawyer, rendering ordinary and normal professional services, to the status of an "agent", in order to justify service upon him as service upon his client, is extremely novel.

In the entire text of Section II of its opinion, not once did the Court refer to Mr. Wilson as an attorney. This could not have been because of the limited power of attorney granted him pursuant to a provision of

the settlement agreement, since the Court stated that it did not "rest" upon such power.[11] (App. A. p. 6a).

Instead, the Court of Appeals took the extreme position that the attorney who conducted Interhandel's Section 9(a) suit in the District, became its agent for the service of process in another action. It found the second action "reasonably within the ambit of those [related to the first action] tasks" (App. A, p. 6a);[12] but obviously realizing how far it had gone, the court below stated that it intended its "ruling to be no broader than the case" (App. A, p. 6a). It then restated its ruling as follows (App. A, p. 6a):

> "* * * We hold that, if a foreign corporation comes into the District of Columbia for the purpose of filing and prosecuting in the District Court a suit concerning certain property, it cannot, by restricting the authority of its resident agent, immunize itself against suit in that same court involving that same property."

Apparently, the key phrase in the foregoing is "suit in that same court involving that same property". While the defect in the opinion is far more fundamental than that phrase, the court was incorrect, Peti-

---

[11] It is not surprising that the Court of Appeals did not bottom its decision upon Wilson's power of attorney. The Stipulation provision (R. 32), the Board resolution authorizing the power of attorney (R. 33), and the power itself (R. 34), all contained the limitations that Wilson was authorized to accept service only in proceedings between the United States and Interhandel which involved the interpretation and enforcement of the settlement stipulation, and "for no other purpose and no other extent whatsoever". *Kenny Construction Company v. Allen*, 101 U.S. App. D.C. 334, 248 F. 2d 656 (1957) recognized that a power of attorney could be so restricted as to prevent service of process for other than its expressed purpose.

[12] This is hardly so, since the situation, simply stated, is as follows: A sues B and recovers X dollars. C sues A to recover the X dollars.

tioner submits, in placing reliance upon the property being the same, i.e., money proceeds of vested stock. The instant suit is not an equitable one to enforce rights in property, and the court recognized this when it stated that Respondents "claim no equitable lien upon the funds held in the Interhandel account" (App. A, p. 9a).

When the opinion below is stripped of qualifying phrases, such as "under the total circumstances of the case" (App. A, p. 6a), "the right to serve process in any manner * * * permitted by law" (App. A, p. 6a), and "an action reasonably within the ambit of" an attorney's tasks (App. A, p. 6a), the lower court actually held that a practicing lawyer in the District of Columbia, who is representing a nonresident plaintiff in the courts there, may be served with process as an "agent" of the foreign corporation in a wholly different and independent piece of litigation. To say that this is novel is an understatement.

A strikingly similar case in the same court is *WICA* v. *WWSW,* 89 U.S. App. D.C. 308, 191 F. 2d 502 (1951), in which the court held that service of process on Washington, D. C. attorneys was improper. They represented the nonresident corporate defendants on monthly retainers and worked out a settlement for their clients with the plaintiff in a controversy before the Federal Communications Commission. The funds on account of the settlement, payable to plaintiff by defendants, passed through the attorneys' hands. Upon alleged failure to pay the balance, plaintiff filed suit in the District of Columbia, and had process served upon the attorneys as agents of defendants.

The Court of Appeals there said (p. 309 of 89 U.S. App. D.C.; p. 504 of 191 F. 2d):

> "Appellant argues (1) that making the agreement, and partially performing the same in the District

of Columbia through the attorneys, constituted a transacting of business therein; and (2) that attorneys Segal and Caldwell, by virtue of their retainer contracts and the authority reposed in them in connection with the compromise agreement, became agents of their nonresident corporate clients upon whom process might be served in the present suit growing out of the contract entered into and partially performed within the District. The appellees dispute both contentions.

"We think all the services rendered by Messrs. Segal and Caldwell fell within the attorney-client relationship, which prevailed throughout the circumstances related. The fact that the retainer agreements were for stated intervals did not alter the situation. Negotiation of the compromise agreement and settlement of the same as authorized by the clients did not convert the relationship into that of principal and agent. *Settlement of the proceedings before the Commission was akin to settlement of litigaiton before a court. The acts of the attorneys in carrying out the details of the accord, although specially authorized by the clients, were none the less legal services rendered within the scope of the attorney-client relationship.*" (emphasis supplied)

D. The Decision Below Denies Interhandel Due Process of Law

The due process clause of the Fifth Amendment, like its counterpart in the Fourteenth Amendment, requires that a nonresident corporate defendant have certain minimum contacts in the jurisdiction of the forum before it can validly be served with process to support an *in personam* judgment. *International Shoe Company* v. *Washington,* 326 U.S. 310, 90 L. Ed. 95 (1945). Petitioner quotes the following from this case to epitomize this Court's viewpoint:

"* * * Conversely it has been generally recognized that the casual presence of the corporate

> agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there. [Citations omitted] To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process." (p. 317 of 326 U.S.; p. 102 of 90 L. Ed.)

Applying the principles of *International Shoe* to the instant case, it is clear that Interhandel did not have the type and kind of contacts with the District of Columbia which would permit it to be sued *in personam* by plaintiffs in a case where the cause of action is alleged to have occurred in Europe more than thirty years ago.[13] Superimposed upon the foregoing are the facts that the cause of action alleged in the instant suit is unrelated to the litigation instituted by Interhandel to recover its vested property; that Interhandel was required to bring its suit here in order to contest the seizure of its property (Trading with the Enemy Act, Section 9(a)); and that Interhandel actually stood in the position of a defendant in the Section 9(a) suit that it instituted in 1948 (*Societe Internationale* v. *Rogers, supra*).

---

[13] Just before the above quotation, this Court observed in the *International Shoe* case:

> " 'Presence' in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, *but also give rise to the liabilities sued on*, even though no consent to be sued or authorization to an agent to accept service of process has been given. [Citations omitted]" (Emphasis supplied)

Plainly, this removes Interhandel from the area of "presence".

CONCLUSION

The petition for a writ of certiorari should be granted.[14]

Respectfully submitted,

JOHN J. WILSON
FRANK H. STRICKLER
815-15th Street, N. W.
Washington, D. C. 20005
Attorneys for Petitioner
Societe Internationale, etc.

September 1966

---

[14] The Court's attention is called to remarks of Messrs. Stern & Grossman on pages 15 and 188 of their SUPREME COURT PRACTICE (2nd Ed.). Petitioner submits that the case cited by them on page 15, *Public Service Commission* v. *Brashear Freight Lines*, 306 U.S. 204, 83 L.Ed. 608 (1938) and the cases cited in that case, are not apposite to the case at bar. There, Section 266 of the Judicial Code was involved, which permitted appeal only from a *final* decree. Here, Petitioner is proceeding under 28 U.S.C. 1254(1), which does not require an adverse *judgment* of a court of appeals as a prerequisite to review by this Court.

Petitioner submits that the instant case is not moot within such cases as *Local No. 8-6* v. *Missouri*, 361 U.S. 363, 4 L.Ed.2d 373 (1960), and cases discussed in the Court's opinion.

Instead, Petitioner submits that *Chicago* v. *Atchison, etc.*, 357 U.S. 77, 2 L.Ed.2d 1174 (1958) is in point. Interhandel has been sued in the District Court here in two other actions aggregating $17,500,000. Mail service in Switzerland under Rule 4(i)(1)(D) F.R. Civ. P. was quashed and the cases are on appeal from final orders of dismissal (U.S.C.A.D.C.) Nos. 19,995 and 19,996). If the appeals fail, as Petitioner believes they will, it is anticipated that service of process under the instant case's formula will doubtless be attempted.

If the rule of Section II of the lower court's opinion should stand as the law of the District of Columbia, the District Court would be *bound* to follow the Court of Appeals' decision and deny motions to quash, and the Court of Appeals would not likely permit interlocutory appeals under 28 U.S.C. 1292(b) in the face of a denial of certiorari in the case at bar. Consequently, Petitioner would be obliged to endure the expense and inconvenience of two trials in the United States based upon the invalid type of service involved in the instant petition for certiorari.